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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,053	07/07/2003	Itshak Carmona	063170.6813	8048

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BAKER BOTTS L.L.P.  
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DALLAS, TX 75201-2980

EXAMINER
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REVAK, CHRISTOPHER A

ART UNIT	PAPER NUMBER
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2131

NOTIFICATION DATE	DELIVERY MODE
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03/24/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/615,053	<b>Applicant(s)</b> CARMONA, ITSHAK	
	<b>Examiner</b> Christopher A. Revak	<b>Art Unit</b> 2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/7/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. Applicant's amendment to claims 19-27 has been entered, however the claims remain rejected under 35 USC 101. Please refer to the rejection as is recited below.
3. Applicant's arguments with respect to claims 7,9,16,18,25,27,34, and 36 have been considered but are moot in view of the new grounds of rejection.
4. Applicant's arguments filed have been fully considered but they are not persuasive.
5. As per claims 1,10,19, and 28, it is argued by the applicant that Togawa fails to disclose of "scanning the computer system for malicious code based on the determined operating system" and "scanning the computer system for malicious code based on the determined operating system".
6. The examiner disagrees with the applicant's assertion, the teachings of Togawa disclose of obtaining an operating system from the outside and identifying a type of computer virus under an operational environment of an operation system, column 4, lines 46-54. It is taught by Togawa that a DOS operating system is one type of operating system used by the prior art teachings, see column 3, lines 3-6 and it is inherent that it is determined which type of operating system is used since it is known which operating system is to be used by the system during the fetching step. It is unclear how the applicant is differentiating their claim language from the prior art teachings of Togawa, the claims only recite of "determining an operating system of the

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computer system” and “scanning the computer system based on the determined operating system” since the claims vaguely recite of the determination of an operating system. The claims fail to further limit the applicant’s claimed invention from the prior art teachings of Togawa. How does the determination affect scanning for viruses and to what capacity is the determination used for? That is a feature which is not claimed by the applicant, nor has the applicant addresses why it is important to determine which type of operating system is being used in a particular computer system. Togawa clearly discloses that the type of operating system is determined and accordingly, the virus scan is applied to that particular operating system.

7. The examiner has identified an additional prior art teaching which is being applied at this time.

### ***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 19-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite of a “tangible computer readable medium”, however, according to the applicant’s specification on page 3, lines 7-8, the “medium” is disclosed as a “transmission medium” which does not fall into the four statutory classes. Page 2, line 25 of the applicant’s specification discloses that the medium is a “storage medium”. The examiner proposes amending the claims to recite of “tangible computer readable storage medium” to overcome the rejection.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-6,10-15,19-24, and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Togawa, U.S. Patent 6,240,530.

As per claim 1, it is taught by Togawa of a method for detecting and removing malicious code from a computer system, comprising determining an operating system of the computer system; scanning the computer system for malicious code based on the determined operating system; and detecting the malicious code (col. 3, lines 3-6 and col. 4, lines 24-66).

As per claims 2,11,20, and 29, it is disclosed by Togawa of removing the malicious code from the computer system (col. 4, lines 24-26).

As per claims 3,12,21, and 30, Togawa teaches of displaying a message to a user identifying the malicious code (as shown in Figure 12).

As per claims 4,13,22, and 31, Togawa discloses of displaying a message to a user indicating the presence of malicious code in the computer system (as shown in Figure 12).

As per claims 5,14,23, and 32 it is taught by Togawa wherein the removing step further comprises retrieving from a data file, information relating to the detected

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malicious code, including at least one command for restoring the computer system to a state that existed prior to modification by the malicious code and executing the at least one command for restoring the computer system to substantially a state that existed prior to modification by the malicious code (col. 4, lines 24-66).

As per claims 6,15,24, and 33, it is disclosed by Togawa wherein the data file is retrieved based on a command from the user (col. 4, lines 24-66 and as shown in Figure 12).

As per claim 10, it is disclosed by Togawa of a storage medium including computer executable code for detecting and removing malicious code from a computer system, comprising code for determining an operating system of the computer system; code for scanning the computer system for malicious code based on the determined operating system; and code for detecting the malicious code (col. 3, lines 3-6 and col. 4, lines 24-66).

As per claim 19, Togawa teaches of a software stored on a tangible computer readable medium for detecting and removing malicious code from a computer system, the computer system operable when executing the software to perform the steps of determining an operating system of the computer system; scanning the computer system for malicious code based on the determined operating system; and detecting the malicious code (col. 3, lines 3-6 and col. 4, lines 24-66).

As per claim 28, Togawa discloses of a system for detecting and removing malicious code from a computer system, comprising an identifying device adapted to determine an operating system of the computer system; a scanning device adapted to

scan the computer system for malicious code based on the determined operating system; and a code identifying device adapted to detect the malicious code (col. 3, lines 3-6 and col. 4, lines 24-66).

12. Claims 1,10,19, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Flowers et al, U.S. Patent 7,073,198.

As per claim 1, it is taught by Flowers et al of a method for detecting and removing malicious code from a computer system, comprising determining an operating system of the computer system; scanning the computer system for malicious code based on the determined operating system; and detecting the malicious code (col. 4, lines 33-55 and col. 13, lines 25-27).

As per claim 10, it is disclosed by Flowers et al of a storage medium including computer executable code for detecting and removing malicious code from a computer system, comprising code for determining an operating system of the computer system; code for scanning the computer system for malicious code based on the determined operating system; and code for detecting the malicious code (col. 4, lines 33-55 and col. 13, lines 25-27).

As per claim 19, Flowers et al teaches of a software stored on a tangible computer readable medium for detecting and removing malicious code from a computer system, the computer system operable when executing the software to perform the steps of determining an operating system of the computer system; scanning the computer system for malicious code based on the determined operating system; and detecting the malicious code (col. 4, lines 33-55 and col. 13, lines 25-27).

As per claim 28, Flowers et al discloses of a system for detecting and removing malicious code from a computer system, comprising an identifying device adapted to determine an operating system of the computer system; a scanning device adapted to scan the computer system for malicious code based on the determined operating system; and a code identifying device adapted to detect the malicious code (col. 4, lines 33-55 and col. 13, lines 25-27).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 7-9,16-18,25-27, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Togawa, U.S. Patent 6,240,530.

As per claims 7,16,25, and 34, Togawa teaches of the determination of which type of operating system is being used by the computer system (col. 3, lines 3-6 and col. 4, lines 46-54), but fails to teach wherein the scanning step further comprises scanning a memory of the computer system in accordance with a memory layout. The examiner hereby takes official notice that scanning memory of a computer system according to the memory layout is notoriously well known. It is known to configure memory locations into certain blocks wherein particular applications can be stored and to use custom antivirus scans can be tailored towards scanning certain memory



locations for particular viruses that may frequently appear and other locations will be ignored. It is obvious that custom scans are used in an attempt to conserve processing resources by scanning memory locations where viruses are most likely to exist.

As per claims 8,17,26, and 35, Togawa teaches of the determination of which type of operating system is being used by the computer system (col. 3, lines 3-6 and col. 4, lines 46-54), but fails to disclose wherein the scanning step comprises dividing memory locations of the computer system into a plurality of memory blocks and scanning predetermined memory blocks. The examiner hereby takes official notice that dividing memory locations of the computer system into a plurality of memory blocks and scanning predetermined memory blocks is notoriously well known. It is known to configure memory locations into certain blocks wherein particular applications can be stored and to use custom antivirus scans can be tailored towards scanning certain memory locations for particular viruses that may frequently appear and other locations will be ignored. It is obvious that custom scans are used in an attempt to conserve processing resources by scanning memory locations where viruses are most likely to exist.

As per claims 9,18,27, and 36, the disclosure of Togawa teaches of the determination of which type of operating system is being used by the computer system (col. 3, lines 3-6 and col. 4, lines 46-54), but fails to teach wherein selected memory blocks are not scanned. The examiner hereby takes official notice that selected memory blocks are not scanned is notoriously well known. It is obvious to a person of ordinary skill in the art at the time of the invention to have been motivated to recognize

that custom antivirus scans can be tailored towards scanning certain memory locations for particular viruses that may frequently appear and other locations will be ignored. It is obvious that custom scans are used in an attempt to conserve processing resources by not scanning memory locations that viruses are most likely not to exist.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Christopher A. Revak/  
Primary Examiner, Art Unit 2131